

13282 PL-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Claim by Subcontractor for Work Performed]

FILE: B-198001

DATE: March 28, 1980

MATTER OF: Cianbro Corporation *DLG 04253*

AGC00164

DIGEST:

DLG 04254

CNG00734

GAO will not review claim under dredging contract where prime contractor refuses to pay subcontractor for work performed under contract since, with exception of remedy provided by Miller Act, settlement of obligations between contractors and those furnishing labor and materials ordinarily is matter outside GAO jurisdiction, there being no privity between such person and United States.

By telegram of February 29, 1980, and letter of March 5, 1980, with enclosure, Cianbro Corporation (Cianbro) requested an independent review by our Office of contract No. 92-42-DOTSCG01-9242 for the United States Coast Guard Dredging Project, Portland, Maine.

Hydro-Dredge Corporation (Hydro-Dredge), which was the prime contractor for the above contract, entered into a subcontracting arrangement with Cianbro for the removal by Cianbro of dredgings to an approved waste disposal area.

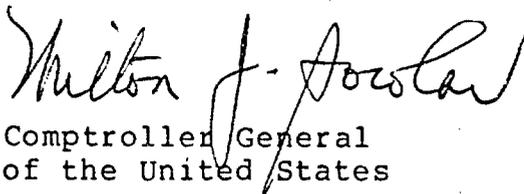
Cianbro states that prior to the removal of the dredging to the approved waste disposal area it (Cianbro) placed the dredgings on an adjoining lot to dry out, after which the dredgings were removed to the waste disposal area. Cianbro states that it removed the dredgings in conformance with the terms of the contract, but that Hydro-Dredge refuses to pay it for the removal. According to Cianbro, Hydro-Dredge claimed that Cianbro did not remove the dredgings in accordance with the terms of the contract, but that the owner of the adjoining lot used the dredgings to fill its lot. Also, according to Cianbro, Hydro-Dredge's surety, Peerless Insurance Company, has refused to pay Cianbro's

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claim under the payment bond. Finally, Cianbro states that the United States Coast Guard has refused to direct Hydro-Dredge or its surety to pay Cianbro for the work it performed.

While Cianbro's request speaks in terms of an independent review by our Office, it is essentially a claim by a subcontractor against the prime contractor. Concerning subcontractor claims of this nature it is well established that, other than the remedy provided by the Miller Act (payment bond), which is in the nature of a substitute for mechanics liens not recognizable by the Government, the settlement of obligations between contractors and those furnishing labor and materials ordinarily is a matter outside our jurisdiction, there being no privity of contract between such persons and the United States. See Kellogg v. United States, 74 U.S. (7 Wall.) 361 (1868); B-163019, December 19, 1967; 37 Comp. Gen. 115 (1957).

Since it does not appear that our Office has authority to consider Cianbro's claim, we will take no further action in this matter.


For the Comptroller General
of the United States